

Anne Cole Widow, and Harry
Cole Esq; Appellants.

Mercy Godfrey Executrix of
William Godfrey, Executor of
Henry Godfrey, Respondent.

The Appellants C A S E.

Anno 1690.

Easter Term,
1703.

THE Appellant *Anne* being acquainted with the Testator *Henry Godfrey*, an Attorney at Law, who was a moneyed Man, and he Acting as Attorney and Solicitor for the said Appellant, and well knowing his Money to be Safe in her Hands, did, without so much as a Note under the said Appellants Hand, lend her at several Times, several Sums of Money, and left in her Hands several Sums of Money as Cash for his Convenience, until he should call for the same. To have a Discovery of which Sums yet unpaid, and to have repayment thereof, the said *William Godfrey* as Executor of the said *Henry*, Exhibited his Bill into the High-Court of Chancery against the Appellant, thereby setting forth, That the Appellant *Anne* was justly Indebted to the said *Henry Godfrey* at his Death in 350 l. for Money lent, and that to secure the Payment thereof, and other Debts the Appellant *Anne* owed, she had Assigned an Annuity she was Intituled to of 500 l. per Annum and upwards, and all her personal Estate, to the said Appellant *Harry*, Reserving only an Annuity of 50 l. per Annum for herself.

Note, This Cause might have been as well tried at Law, as in Equity, if *William Godfrey* had had any Witnesses to have proved his Declaration, and saved the Expence of a Chancery Suit,

To which Bill the Appellants put in their Answer, and the said Appellant *Anne* acknowledged that she borrowed several Sums of the said *Henry Godfrey*, which she repaid him in his Life-time; and also, That the said *Henry Godfrey* left in her Hands several Sums of Money, all which she also paid the said *Henry Godfrey* or to his Order, except the Sum of 100 l. brought into the Court of *Queens-Bench* upon the Common Rule. An Action being brought against her there, by the Respondents Testator *William Godfrey* for 1034 l. 10 s. 4 d. as due to his said Testator, before the said Bill Exhibited. And both the Appellants aver by their Answer, That the Appellant *Anne* never made over her Annuity or personal Estate to the Appellant *Harry* for the purposes in the Bill upon any other Account whatever. And the Appellant *Harry* avers he never received the Profits of the said Annuity by Vertue of any Deed of Trust or Assignment whatever.

31 May 1704.

That the said Cause came to be Heard before his Honour the Master of the Rolls *ex parte*. who Decreed Sir *Lacon William Child* to take an Account what the said *Henry Godfrey* advanced and Lent to the Appellant *Anne* which was not Repaid in his Life-time with Interest and Costs of the said Suit, and what the Master should Certifie due to the said Plaintiff the Appellants should pay the same, unless they should at the Return of a *Subpna* shew Cause to the contrary.

7 March, 1704.

That the Appellants having obtained a Re-hearing, his Honour was pleased to Confirm the former Order, with this Alteration; That Costs should be reserved till after the Account taken, and the said Master was to Report any difficulty arising in the Accounts specially: But the said Respondents Testator *William*, before any farther Proceedings, were had in the said Cause signed and enrolled the said Decree, which is not usual.

7 Dec. 1705.

That the Master Reported 414 l. due for Principal and Interest, without distinguishing what was Lent, and what only deposited in the Appellant *Anne*'s Hands, but computed Interest for the whole, and Ordered the Appellant to pay the same.

That *William Godfrey* dying, having made his Will, and the Respondent *Mercy* sole Executrix who in May, 1706. brought a Bill to revive the said Proceedings.

That the Cause coming on to be Re-heard (on Appeal to the Right Honourable the Lord Keeper of the Great Seal of England) the 29th of January last, the Respondent insisted that the Decree was Signed and Enrolled, and that his Lordship would not proceed to Re-hear the said Cause. Whereupon the Order for Re-hearing was Discharged, tho' Costs were given the Respondent by an Order made the 21st Day of December last, which was subsequent to the said Enrolment, and stands now as part of the said Decree.

From which Decree and Masters Report, the Appellants humbly Appeal for the Reasons following, viz.

1. The Appellant *Anne* humbly conceives and apprehends that she is aggrieved by the said Decree. For that the Money pretended by the Respondent to be Lent the Appellant *Anne*, was only left in her Hands, and not Lent her, but if Lent, it was not Lent upon any Security to carry Interest as the Bill admits and sets forth, nor any Day of Payment set for the same, but demandable at Pleasure; therefore no Interest ought to have been Decreed to the Respondents Testator for the same.

2. The Appellant *Harry* humbly conceives that he is aggrieved by the said Decree, he being Decreed to pay the Money due from the Appellant *Anne* with Interest and Costs jointly with her, when its not so much as pretended in the Bill of Complaint, that he was concerned in any of the Transactions between the said *Henry Godfrey* and the Appellant *Anne*, or any way Security for the same. Neither did the Appellant *Anne* ever Grant or Assign over to the said Appellant *Harry*, All, or any Part of her said Annuity, or All, or any Part of her personal Estate in Trust to pay her Debts as by the Bill suggested; nor did the said Appellant *Harry* ever see any Deed to that Effect.

3. The Appellants are aggrieved by the Proceedings in the said Cause, since the Death of the said *William Godfrey*, the said Suit being abated by his Death, and not regularly revived; for that the same ought to have been revived by *Scire facias*, and not by Bill.

Note, This Cause was upon the Tryal at Law, referred to Sir Robert Jenkinson and John Wheeler Esq; by Rule of Court, but the Respondents Testator afterwards declined the said Reference. well knowing that he could not prove more then 100 l. due to his Testator.

4. For that the said 100 l. paid into Court before the said Suit Commenced, being the whole principal Debt due to the said Testator *Henry*, or the Respondents Testator, had not the said Decree ordered Interest, the said Appellants on Proof thereof might have been Intituled to Costs against the Respondents Testator, having before made Proof thereof in the said Action by one Mrs. *Rodes*, which Witness was Dead before the bringing the said Bill, and was the occasion of this Suit.

Therefore the Appellants humbly Hope that Your Lordships will be pleased to Reverse the said Decree.

LAW. CARTER.